IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

APPEAL FROM ORDER NO.858 OF 2005

Shri Krishnakant B. Shinde. ...Appellant.
Vs.
Godrej Saralee Ltd. ...Respondent.

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Ms. Pratima Chitale i/b. Bhave & Co. for the Appellant.
Mr. Shekhar Shetye with Ms. Deepa Hate i/b. Gajaria & Co. for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 14, 2005.

P.C.:

In the Notice of Motion before the City Civil Court, two reliefs were sought on behalf of the Respondent, the original Plaintiff. The first relief was for the enforcement of a covenant restraining the appellant from taking up employment with any Company carrying on a business competing with the Respondent for a period of two years from 15th May 2003 on which date the Appellant resigned from the service of the Respondent. The second relief was in order to enforce the covenant contained in clause 4 of the agreement of confidentiality embodied in the Respondent's letter of appointment. The letter is dated 28th May

2003. The Learned Trial Judge has made the Motion absolute in terms of prayer clauses (a) and (b) by granting the relief as prayed.

The appellant was appointed by the Respondent with effect from 10th June 1996 in the post of Purchase Assistant. He was subsequently promoted on 1st April 1998 as Purchase Officer, on 1st April 2000 as Senior Officer (Purchase) in Grade M5 and on 1st March 2001 as an Executive Manager in Grade M4. The work which the Appellant was required to perform has been set out in paragraph 3 of the Plaint. Similarly, in paragraph 4 there is a recital of the knowledge which the Appellant acquired in respect of the business and processes of the Respondent. Clause 4 of the terms of employment as contained in the Respondent's letter dated 28th May 2003 reads as follows :

> "4. You shall not during your employment with the Company or afterwards:
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> (a) disclose to anyone (except someone authorised by the Company or as required by your duties under your employment agreement or by law) or
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> (b) use for your own purposes or for any purposes other than those of the Company, or

(c) through any failure to exercise all due care and diligence, cause any authorised disclosure of

any confidential information of the Company or any Affiliated Company relating to its manufacturing processes, research or development projects, finances, lists of customers or suppliers, prices, commercial relationships, trade secrets or any other confidential information which you obtain by virtue of your employment or in respect of which the Company or any Affiliated Company is bound by an obligation of confidence to a third party."

The Appellant tendered his resignation on 15th May 2003 and requested the employer to accept the resignation and relieve him from service. On 29th May 2003, the Respondent accepted the resignation with effect from close of working hours on 13th June 2003. The Appellant is accordingly relieved with effect from 13th June 2003.

On behalf of the Appellant it has been submitted that the

terms and conditions in the agreement of confidentiality and non-competition were communicated on 28th May 2003 after the Appellant had submitted his resignation. However, it is clear from the letter of resignation that the Appellant proceeded on the basis that his resignation would have to be accepted by the employer. The employer accordingly accepted the resignation with effect from 13th June 2003. The terms of employment as contained in the communication dated 28th May 2003 were, therefore, issued at a point of time when the contract of employment was subsisting. The employment came to an end on 13th June 2003.

The relief to the effect that the Appellant should not accept any competing employment for a period of two years from 15th May 2003 has now been rendered infructuous since the aforesaid period has expired. However, I am of the view that the Learned Trial Judge was justified in granting relief in terms of prayer clause (b) of the Motion having regard to the covenant contained in clause 4 of the terms of employment. The Appellant is by virtue of clause 4 precluded from making a disclosure of confidential information inter alia relating to the manufacturing processes, research and development projects, finances, lists of customers or suppliers, prices, commercial

relationships, trade secrets or any other confidential information which the Appellant may obtain by virtue of his employment with the Company. The Appellant is bound by the terms of that obligation. Clause 5 of the terms of employment, however, provides that the restriction in clause 4 shall cease to apply to information or knowledge which is available to the public in general. Therefore, the order of injunction that has been granted by the Learned Trial Judge shall operate in respect of confidential information of the nature that would fall within the purview of clause 4, but which is not a part of public knowledge within the meaning of clause 5. Subject to the aforesaid clarification, the appeal is disposed of.

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